

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JACK A. AND ELIZABETH A. CAHLTON)

For Appellants: Jack A. Carlton,
in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jack A. and Elizabeth A. **Carlton** against proposed assessments of additional personal income tax and penalties in the total amounts of \$723.00 and \$204.68 for the years 1974 and 1975, respectively.

Appeal of Jack A. & Elizabeth A. Carlton

The amount of the additional tax proposed to be assessed for 1974 was erroneously overstated in respondent's notice of action and respondent has conceded that the correct amount for that year should be \$286.00. Appellants apparently do not otherwise contest the amounts of additional tax for either year. Respondent has also conceded that the penalties imposed for both years should be withdrawn. Therefore, the only question which remains to be decided in this appeal is whether interest charges have properly been imposed on the deficiency assessments.

Respondent received from appellants' representative a copy of a federal audit report which reflected a number of changes to appellants' 1974 and 1975 federal reported income. The cover letter to which the audit report was attached was dated May 30, 1978. The Franchise Tax Board requested additional information regarding certain capital gains treatment in a letter dated June 30, 1978. This letter was apparently returned undelivered because of a wrong address and was re-mailed on August 4, 1978. Receiving no reply to this letter, on June 29, 1979, respondent issued notices of proposed assessment based on the federal audit report and imposed a 25 percent penalty for each year for failure to provide requested information. By letter dated August 7, 1979, appellants protested the proposed assessments and sent the information regarding capital gains. Notices of action were issued on November 19, 1979, revising the proposed assessment amounts to reflect the additional information received. This timely appeal followed. As noted previously, the additional tax is uncontested and the penalties have been abated, leaving only the question of interest charges on the deficiency to be resolved.

Appellants argue that although they have not paid the deficiencies, they have attempted to settle this matter in a timely manner since June 1978, and the Franchise Tax Board has caused an inordinate delay in arriving at the correct adjustments. Therefore, they contend that they should be excused from paying interest on the deficiency.

Revenue and Taxation Code, section 18688, provides, in pertinent part:

Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax . . . from the date prescribed for the payment of the tax until the date the tax is paid.

Appeal of Jack A. & Elizabeth A. Carlton

We have held in numerous decisions that the imposition of interest on an unpaid deficiency is mandatory under section 18688. (See e.g., Appeal of Thomas R. Edwards, Cal. St. Bd. of Equal., April 8 1980, and appeals cited therein.) Interest is not imposed as a penalty, but is compensation for the taxpayer's use of the money during the period of underpayment. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978.) Even if respondent had caused a delay which was unduly long, the imposition of interest would not be precluded; a taxpayer can stop the interest running at any time by paying the tax assessed without jeopardizing the right to a refund. (Appeal of Ronald J. and Eileen Bachrach, Cal. St. Bd. of Equal., Feb. 6, 1980.)

The fact that respondent's proposed assessment was revised erroneously does not alter the fact that additional tax was owed for both 1974 and 1975. The imposition of interest, computed on the corrected amount of the deficiency, was proper and must be sustained.

Appeal of Jack A. & Elizabeth A. Carlton

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Jack A. and Elizabeth A. Carlton against proposed assessments of additional personal income tax in the amounts of \$723.00 and \$204.68 for the years 1974 and 1975, respectively, is hereby modified to reflect respondent's concessions and the corrections noted in the foregoing opinion. In all other respects, the action of the Franchise Tax Board is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett - -, Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

_____, Member

_____, Member